

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Jason Cannady, #200706038,	)	C/A No. 3:07-3725-SB-JRM
	)	
Plaintiff,	)	
v.	)	REPORT AND RECOMMENDATION
	)	
Garry Bryant;	)	
Wally Hampton;	)	
Karen Black;	)	
Joey Preston,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff, proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983.\* Plaintiff files this action *in forma pauperis* under 28 U.S.C. § 1915. Plaintiff is incarcerated at the Anderson County Detention Center (ACDC). Plaintiff names Garry Bryant, Wally Hampton, Karen Black and Joey Preston as Defendants.

***Pro Se and In Forma Pauperis Review***

Under established local procedure in this judicial district, a careful review has been made of the *pro se* complaint pursuant to the procedural provisions of 28 U.S.C. § 1915; 28 U.S.C. § 1915A; and the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996). This review has been conducted in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4<sup>th</sup> Cir. 1995); and *Todd v. Baskerville*, 712 F.2d 70 (4<sup>th</sup> Cir. 1983).

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\*Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B) and Local Rule 73.02(B)(2)(d), D.S.C., the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the District Court. Further reference to this complaint brought under Title 42 of the United States Code will be by section number only.

This complaint has been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action “fails to state a claim on which relief may be granted” or is “frivolous or malicious.” 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A finding of frivolity can be made where the complaint “lacks an arguable basis either in law or in fact.” *Denton v. Hernandez*, 504 U.S. at 31. A claim based on a meritless legal theory may be dismissed *sua sponte* under 28 U.S.C. § 1915(e)(2)(B). See *Neitzke v. Williams*, 490 U.S. 319 (1989); *Allison v. Kyle*, 66 F.3d 71 (5<sup>th</sup> Cir. 1995).

This Court is required to liberally construe *pro se* documents, *Estelle v. Gamble*, 429 U.S. 97 (1976), holding them to a less stringent standard than those drafted by attorneys, *Hughes v. Rowe*, 449 U.S. 9 (1980). Even under this less stringent standard, however, the *pro se* complaint is subject to summary dismissal. The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. However, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

### **Discussion**

Plaintiff brings this complaint as a civil rights action under § 1983 alleging a laundry list of prison conditions issues at ACDC. All claims are stated generally, and the only specific reference in the complaint to the Plaintiff is that he has suffered bad headaches since coming to the ACDC. (Compl. at 3.) Plaintiff fails to allege how the named Defendants are involved in his prison conditions claims. Other than listing the Defendants in the caption of his complaint, there is no other

reference in the complaint to the Defendants. Plaintiff fails to allege any facts in support of a § 1983 claim against these Defendants.

The Prison Litigation Reform Act requires the court to dismiss an action that is “frivolous” or “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B). A careful review of the complaint reveals no allegations against the named Defendants. *See Cochran v. Morris*, 73 F.3d 1310 (4<sup>th</sup> Cir. 1996) (statute allowing dismissal of *in forma pauperis* claims encompasses complaints that are either legally or factually baseless); *see also Weller v. Dep't of Social Servs.*, 901 F.2d 387, 397 (4<sup>th</sup> Cir. 1990) (upholding district court's dismissal of defendants where no allegations were made against them or suggested that defendants “played any part in the alleged violation”). Therefore, this complaint should be dismissed.

### **Recommendation**

Accordingly, it is recommended that the District Court dismiss the complaint in the above-captioned case *without prejudice* and without issuance and service of process. *See Denton v. Hernandez*, 504 U.S. at 25; *Neitzke v. Williams*, 490 U.S. at 319; *Haines v. Kerner*, 404 U.S. at 519; *Todd v. Baskerville*, 712 F.2d at 74; 28 U.S.C. § 1915(e)(2)(B); 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal).

s/Joseph R. McCrorey  
United States Magistrate Judge

November 26, 2007  
Columbia, South Carolina

**Plaintiff’s attention is directed to the notice on the following page.**

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).